

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MARK SHAMMO DICKOW,

Defendant-Appellant.

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UNPUBLISHED

July 13, 2001

No. 214178

Oakland Circuit Court

LC No. 97-155861-FH

Before: Saad, P.J., and Holbrook, Jr., and Murphy, JJ.

MEMORANDUM.

Defendant appeals as of right from a jury conviction of second-degree criminal sexual conduct. (CSC II), MCL 750.520c(1)(a). Defendant was sentenced to one and one-half to fifteen years' imprisonment. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant's sole claim on appeal is that his trial lawyer was ineffective. "To prove a claim of ineffective assistance of counsel . . . , a defendant must show that counsel's performance fell below an objective standard of reasonableness and that the deficient performance prejudiced the defense so as to deny defendant a fair trial." *People v Smith*, 456 Mich 543, 556; 581 NW2d 654 (1998). Defendant must overcome the presumption that the challenged action constituted sound trial strategy. *People v Stanaway*, 446 Mich 643, 687; 521 NW2d 557 (1994).

Having reviewed the record, we find that the general defense pursued at trial and the evidence introduced to support it constituted legitimate trial strategy which this Court will not attempt to second-guess. *People v Stewart (On Remand)*, 219 Mich App 38, 42; 555 NW2d 715 (1996). While the lawyer who testified for defendant at the *Ginther*<sup>1</sup> hearing disagreed with trial counsel's strategy, "this Court will not assess counsel's competence with the benefit of hindsight." *People v Rice (On Remand)*, 235 Mich App 429, 445; 597 NW2d 843 (1999). "The fact that the strategy chosen by defense counsel did not work does not constitute ineffective assistance of counsel." *People v Williams*, 240 Mich App 316, 332; 614 NW2d 647 (2000).

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<sup>1</sup> *People v Ginther*, 390 Mich 436; 212 NW2d 922 (1973).

We further find nothing improper about the prosecutor's rebuttal argument. He correctly noted that the instruction regarding the burden of proof did not require proof to a moral certainty. See, e.g., *People v Snider*, 239 Mich App 393, 420; 608 NW2d 502 (2000); *People v Hubbard (After Remand)*, 217 Mich App 459, 487; 552 NW2d 493 (1996); *People v Sammons*, 191 Mich App 351, 372; 478 NW2d 901 (1991). Further, the prosecutor did not impermissibly call upon the jury to convict simply because other juries in other courts returned guilty verdicts. There was no error and defense counsel was not required to make a meritless objection. *People v Torres (On Remand)*, 222 Mich App 411, 425; 564 NW2d 149 (1997).

Affirmed.

/s/ Henry William Saad  
/s/ Donald E. Holbrook, Jr.  
/s/ William B. Murphy